IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

OP.No. 7447 of 2001(J)

PETITIONER:

MRS. M. RATNAMMA CHARMAPALAN, PROPRIETOR, NANDACARDAMOM PLANTATION, KUNNAMPETTA, WAYANAD DIST.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVT., (TAXES), SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SALES TAX OFFICER, VYTHIRI AT KALPETTA.

3. THE SALES TAX OFFICER, PATHANAMTHITTA.

4. THE INSPECTING ASST. COMMISSIONER OF COMMERCIAL TAXES, (AIT & ST), PATHANAMTHJITTA.

5. THE TAHSILDAR (RR), VYTHIRI, WAYANAD.

6. M/S.UNITED AROMATICS PVT. LTD., KOVIYOOR, TIRUVALLA, KERALA, (FORMERLY UNITED VENEERS PVT. LTD. (AMALGAMATED))

R1 TO R5 BY GOVERNMENT PLEADER SRI.C.K. GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 12177 OF 2001 IN OP 7447 OF 2001

DISMISSED

16.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER OF ASSESSMENT PASSED BY THE 2ND RESPONDENT FOR THE YEAR 1995-96 DATED 27.12.1997

EXT.P2 TRUE COPY OF THE DEMAND NOTICE NO. A2-1795/97 (95-96) ISSUED BY THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE DEMAND NOTICE FOR PAYMENT OF THE SURCHARGE AMOUNT ISSUED BY THE 2ND RESPONDENT DATED 24.1.1998

EXT.P4 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 5TH RESPSONDENT DATED 28.7.1998

EXT.P5 TRUE COPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT DATED 24.9.1998

EXT.P6 TRUE COPY OF THE DETAILS OF PURCHASE OF ROSEWOOD LOGS BY THE 6TH RESPONDENT FROM THE PETITIONER DURING 1995-96

EXT.P7 TRUE COPY OF THE DECLARATION FILED BY THE 6TH RESPONDENT BEFORE THE 2ND RESPONDENT DATED 18.9.1998

EXT.P8 TRUE COPY OF THE JUDGMENT IN OP 20803 OF 1998 PASSED BY THE HON'BLE HIGH COURT DATED 19.7.1999

EXT.P9 TRUE COPY OF THE REQUEST LETTER MADE BY THE PETITIONER TO THE 6TH RESPONDENT DATED 4.10.99

EXT.P10 TRUE COPY OF THE REQUEST FOR REFUND OF TAX AND SURCHARGE MADE BY THE 6TH RESPONDENT TO THE 4TH RESPONDENT DATED 18.10.99

EXT.P11 TRUE COPY OF NOTICE NO. A2-1795/97 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 21.11.2000

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 7447 OF 2001

Dated this the 16th day of March, 2007

JUDGMENT

Petitioner is in this court a second round challenging recovery proceedings for recovery of arrears of sales tax on sale of timber (rose wood) by petitioner to 6th respondent. First O.P. was disposed of by this Court vide judgment Ext.P8 wherein this court stated that petitioner has to necessarily discharge sales tax liability as the petitioner is first seller and tax is assessed and demanded based on return filed by the petitioner. However, petitioner's claim is that sixth respondent can claim refund and petitioner can recover money from the sixth respondent. This Court gave three months' time to the petitioner to collect tax from the sixth respondent and remit it. It is categorically found in the judgment that petitioner has no escape from liability and if the sixth respondent has any claim for refund it is for the sixth respondent to claim it. I do not think this O.P. is maintainable for the same relief. Since petitioner is admittedly liable for payment of arrears of sales tax, respondents are entitled to recover the tax from the

petitioner. So far as sixth respondent is not an application in this Court, there is no need to consider sixth respondent's eligibility for refund which is a matter to be adjudicated by concerned officer at the request of sixth respondent.

In the circumstances, O.P. fails and is dismissed.

,(C.N.RAMACHANDRAN NAIR)
Judge